



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** Requirements for Placement of  
Tax Measures on the Ballot

**DATE:** February 24, 2012

## SUPPLEMENTAL

### BACKGROUND

At the City Council meeting on February 14, 2012, Councilmember Rocha requested information about the City Council's choices for calling elections for the purpose of placing a tax measure on the ballot. The purpose of this memorandum is to address this question.

### ANALYSIS

#### **Proposition 218 Requirements**

Since the passage of Proposition 218 (Article XIII C of the California Constitution) in 1996, there are a number of requirements for the imposition of new taxes or increases to existing taxes:

- General taxes – which may be used for any purpose – require majority voter approval.
- Special taxes – which are restricted to specific purposes – require two-thirds voter approval.
- An election for approval of a general tax must be consolidated with a regularly scheduled general election for members of the governing body of the local government unless the governing body by unanimous vote declares an emergency.

#### **City Charter and Proposition 218 Requirements**

Proposition 218 did not define the term "general election." Elections in San José are governed by the City Charter and the California Elections Code to the extent that the Elections Code does not conflict with the City Charter. Under Charter Section 1600(b), a general election is one which is "... held simultaneously in all districts of the city, whether municipal, county or state...." The elections in June and November, 2012 are

general elections under the City Charter since both will be held in conjunction with the State-wide elections on these dates.

Under City Charter Section 1600, the elections for the Mayor and Council offices are termed "Regular Municipal Elections" which are required to occur with the State Primary and General Elections. Currently, the State Primary and General Elections occur in June and November, respectively, of even-numbered years. Both the June and November 2012 elections for the election of the even-numbered Council offices are considered "Regular Municipal Elections" with the June election designated as the "Primary Election" and the November election designated as the "Run-Off Election."

The Proposition 218 requirement that a general tax be placed on a ballot at which council members also are standing for election is met for the June 2012 election as the council offices for the even-numbered districts will be voted on at the June 2012 election. For the November 2012 election, this requirement will be met assuming that one or more council offices is subject to a run-off election.

### **Off-Cycle Elections**

In addition to the regularly scheduled elections for the Mayor and Council offices, Charter Section 1601 specifies the circumstances under which the City Council may call for a special election. Unless the subject of the election falls within the specified list (filling a vacancy, referendum, recall, initiative, or to change the Charter) the special election must either be consolidated with a State, County or school district election, or, if not consolidated, at any other time by the vote of 10 members of the Council.

If the City Council were to choose to place a **general** tax measure on the ballot at an off-cycle election called pursuant to Charter Section 1601, then in order to comply with Proposition 218, the City Council would need to declare an emergency by unanimous vote.

A **special** tax measure may be placed on the ballot of an off-cycle election by a majority vote of the Council, if it is consolidated with another election, or with 10 votes of the Council if it is not consolidated.

### **California Revenue and Taxation Code Requirements**

Besides the City Charter and Proposition 218 requirements for placing a tax measure on the ballot, there is an additional State law requirement for sales tax measures. As a technical matter, the sales tax increase under consideration by the City Council is a Transactions and Use tax governed by the California Revenue and Taxation Code. The Transaction and Use tax incorporates provisions of the State sales tax law and is administered and collected by the State Board of Equalization in a similar manner as

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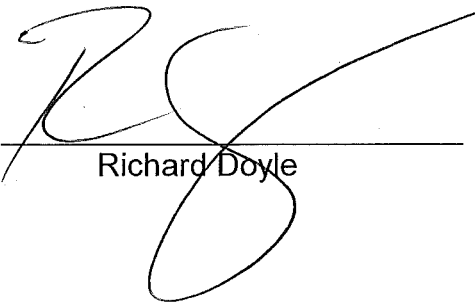
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the State sales tax. To the retail consumer, it appears to be an increased sales tax and is commonly referred to as an increased sales tax.

Under Revenue and Taxation Code Section 7285.9, placement of a Transactions and Use tax on any ballot requires approval of two-thirds of the City Council regardless of whether it is a special tax or a general tax. However the Proposition 218 voter approval requirements (majority vote for a general tax; two-thirds vote for a special tax) still apply.

A chart summarizing these alternatives is set forth on the attachment to this memorandum.



Richard Doyle

cc: Debra Figone  
Dennis Hawkins  
Julia Cooper

City Council Vote Requirements to Place Tax Measure on the Ballot				
	June 2012 (Regular Primary Election)	November 2012 (Regular Run-off Election)	Off-Cycle Election (Consolidated with election in County) (Charter Section 1601(d))	Off-Cycle Election (At any other time and not consolidated) (Charter Section 1601(e))
General Transactions and Use Tax (Majority Voter Approval)	Also a General Election  2/3rds vote to place measure on ballot	Also a General Election  2/3rds vote to place measure on ballot  (Assumes that one or more offices will be subject to the run-off election. If not, then unanimous vote of the Council is required to declare an emergency.)	Unanimous vote to declare an emergency  Majority vote to call the election  2/3rds vote to place measure on ballot	Unanimous vote to declare an emergency  10 votes to call the election  2/3rds vote to place measure on ballot
Special Transactions and Use Tax (Two-Thirds Voter Approval)	2/3rds vote to place measure on ballot	2/3rds vote to place measure on ballot	Majority vote to call the election  2/3rds vote to place measure on ballot	10 votes to call the election  2/3rds vote to place measure on ballot
General Tax (Majority Voter Approval)	Majority vote to place measure on ballot	Majority vote to place measure on ballot  (Assumes that one or more offices will be subject to the run-off election. If not, then unanimous vote of the Council is required to declare an emergency.)	Unanimous vote to declare an emergency  Majority vote to call the election  Majority Vote to place measure on ballot	Unanimous vote to declare an emergency  10 votes to call the election  Majority vote to place measure on ballot
Special Tax (Two-Thirds Voter Approval)	Majority vote to place measure on ballot	Majority vote to place measure on ballot	Majority vote to call the election  Majority vote to place measure on ballot	10 votes to call the election  Majority vote to place measure on ballot